

STATE OF VERMONT
PUBLIC SERVICE BOARD

Dig Safe Notice No. 468

In Re MJ Hassett Excavating, Alleged Violation of)
July 19, 2007, as reported by Verizon New England Inc.)

Order entered: 6/30/2009

ORDER RE: NOTICE OF PROBABLE VIOLATION

Background

1. Pursuant to 30 V.S.A. § 7001, et. seq. ("Dig Safe statute"), and Vermont Public Service Board Rule 3.800, the Vermont Department of Public Service ("Department") issued a Notice of Probable Violation of Underground Utility Damage Prevention System ("NOPV") to MJ Hassett Excavating ("Respondent").¹
2. Incident Date: July 19, 2007
3. Incident Location: Ledgewood, Williston, VT
4. Name and Address of Company that Reported the Incident to the Department: Verizon New England Inc., 266 Main St., Room 201, Burlington, VT 05401.
5. Date NOPV issued by Department: January 11, 2008
6. Department's Statement of Evidence Supporting the Alleged Violation: "The Department of Public Service investigated this incident and determined the following details. On 7/19/07, M.J. Hassett Excavating began excavating to place a drainage line at this site. M.J. Hassett Excavating did not notify the one call center prior to excavating. During the course of the excavation, an unmarked Verizon distribution wire was damaged, causing a loss of service to 8 customers for 24 hours. The site was not marked out because no notification was made to the one call system prior to excavating. M.J. Hassett Excavating notified Verizon of the damaged facility. The Department of Public Service issued [0] Notices of Probable violation (NOPV's) to M.J. Hassett Excavating during the 12 months preceding this incident."²

1. Department of Public Service Dig Safe Case # 1317.

2. NOPV at 4.

7. Statute, Rule, Regulation or Order Allegedly violated: 30 V.S.A. § 7004
8. The Department's Recommended Remedial Action(s) (Including Civil Penalties): Civil penalty in the amount of Six Hundred Dollars (\$600.00) and attendance at a Department-approved underground damage prevention seminar.
9. The Respondent has objected to the remedy recommended by the Department in the NOPV.
10. In support of the Respondent's objection to the NOPV, the Respondent stated: "The development where the violation occurred was owned by XYZ Real Estate, Inc., of which my mother and grandfather were the owners. These particular lines were installed by myself and my grandfather during one of the many construction phases. I was working for XYZ at the time. The general contractor who hired me for the July 2007 project had previously constructed several houses in the development and had also worked closely with my grandfather. On the day of the violation, my first impulse was to call digsafe prior to proceeding. The GC and I then conferred and we felt we had a real good summation of the line layout with both of us having prior knowledge. The resulting error is testimony to the process as both of us failed in our assumptions. The affected area was less than 50 feet. Again, it was not out of ignorance [about the process]."³
11. In response to the Respondent's objection, the Department stated: "The response does not raise any substantive issues or defenses relevant to a decision of liability in this matter. The Department maintains that the proposed remedial action and/or penalty is appropriate under the facts of the case."⁴
12. No party has requested a hearing in this matter.

Discussion

The Dig Safe statute establishes a process for prevention of damage to underground utility facilities. The process begins with excavators giving advance notice to Dig Safe about the approximate location of any intended excavation activities,⁵ and Dig Safe, in turn, notifying all utility companies authorized to serve in that location about the upcoming excavation activities.⁶

3. Letter of Michael Hassett, dated February 19, 2008.

4. E-mail of GC Morris sent to Susan M. Hudson, Clerk, March 10, 2008.

5. 30 V.S.A. § 7004.

6. 30 V.S.A. § 7005.

The utilities then are required to mark the locations(s) of their underground facilities so that the excavators may take proper precautions to avoid damaging the facilities.⁷ Specific definitions and requirements are set forth in the Dig Safe statute as well as Public Service Board Rule 3.800, and penalties may be imposed by the Board when it finds a violation of the statute.

In this case, the Department has alleged that the Respondent violated 30 V.S.A. § 7004, which provides in relevant part:

No person or company shall engage in excavation activities, except in an emergency situation as defined by the board, without premarking the proposed area of excavation activities and giving notice as required by this section . . . before commencing excavation activities, each person required to give notice of excavation activities shall notify the system referred to in section 7002 of this title. Such notice shall set forth a reasonably accurate and readily identifiable description of the geographical location of the proposed excavation activities.

In Response to the NOPV, the Respondent stated that even though it was aware of the Dig Safe notice requirements, it chose to proceed with excavation activities without first notifying Dig Safe. The Respondent represented that this choice was made because it had installed the lines initially and therefore it felt that it already "had a good summation" of the location of the underground facilities.⁸

Conclusion and Order

Because the Respondent knew that it should have notified Dig Safe prior to commencing excavation and yet did not do so, we conclude that the remedial action proposed in the NOPV is appropriate, and should be imposed.⁹

7. 30 V.S.A. § 7006.

8. Letter of Michael Hassett, dated February 19, 2008.

9. *See*, Public Service Board Rule 3.807(G).

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. Within thirty days of the date of this Order, MJ Hassett Excavating shall pay a civil penalty in the amount of Six Hundred Dollars (\$600.00) by submitting to the Public Service Board a check in that amount made payable to the State of Vermont; and

2. MJ Hassett Excavating shall attend an Underground Damage Prevention Seminar at such time and place as designated by the Vermont Department of Public Service.

Dated at Montpelier, Vermont, this 30th day of June, 2009.

<u>s/ James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/ John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: JUNE 30, 2009

ATTEST: s/ Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.